

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

NORTHERN PLAINS RESOURCE)
COUNCIL, BOLD ALLIANCE,)
NATURAL RESOURCES DEFENSE)
COUNCIL, SIERRA CLUB, CENTER)
FOR BIOLOGICAL DIVERSITY, and)
FRIENDS OF THE EARTH,)

Case 4:19-cv-00044-BMM

Plaintiffs,)

v.)

U.S. ARMY CORPS OF ENGINEERS)
And LIEUTENANT GENERAL TODD T.)
SEMONITE (in his official capacity as U.S.)
Army Chief of Engineers and Commanding)
General of the U.S. Army Corps of)
Engineers),)

**STIPULATION AND JOINT
CASE MANAGEMENT
PLAN**

Defendants,)

and)

THE STATE OF MONTANA,)
TRANSCANADA KEYSTONE)
PIPELINE, LP, TC ENERGY)
CORPORATION, AMERICAN GAS)
ASSOCIATION, AMERICAN)
PETROLEUM INSTITUTE,)
ASSOCIATION OF OIL PIPE LINES,)
INTERSTATE NATURAL GAS)
ASSOCIATION OF AMERICA, and)
NATIONAL RURAL ELECTRIC)
COOPERATIVE ASSOCIATION)

Defendant-Intervenors.)

In response to the Court's order on October 10, 2019, ECF No. 47, the Parties, by and through their undersigned counsel, hereby submit the following Stipulation and Joint Case Management Plan. In support of this Stipulation and Joint Case Management Plan, the Parties hereby state as follows:

1. The Parties agree that this case is a civil action for declaratory judgment and injunctive relief against Defendants pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 to 706, and citizen suit provision of the Endangered Species Act ("ESA"), 16 U.S.C. § 1540(g).

2. The Parties agree that Plaintiffs' claims under the APA are resolved following submission of the administrative record and through motions for summary judgment. Although Plaintiffs contend that adjudication of Plaintiffs' Fourth and Fifth Claims for Relief, arising under the citizen-suit provision of the ESA, is not limited to the administrative record and potentially subject to discovery, the Parties anticipate that the administrative record may provide a sufficient evidentiary basis to adjudicate that claim and thus they do not anticipate the need for discovery at this time. As such, the Parties stipulate that a deadline for completion of discovery is not presently necessary. If it later appears that discovery may be needed for Plaintiffs' ESA citizen suit claims, which Federal Defendants do not concede is permissible, the Parties will first meet and confer. Plaintiffs also contend that discovery may become necessary to support the remedy phase of the

case or a possible preliminary injunction. If such discovery becomes necessary, the Parties will first meet and confer. If the parties are unable to reach agreement on the availability, timing, or scope of discovery they will jointly request the Court's assistance.

3. Pursuant to Local Rule 16.2(a) and consistent with the foregoing, the Parties submit that this case is exempt from preliminary pretrial statements, discovery plans, stipulations of fact, and related requirements.

4. A stipulation to authenticity and foundation is not appropriate for this case because this case is a challenge to an administrative agency action and will be resolved on cross-motions for summary judgment without discovery or trial.

5. The Parties agree that this case is not suitable for an alternative dispute resolution ("ADR") program such as arbitration, mediation, or judicial settlement conference.

6. The Parties agree that this case can be resolved without a trial.

7. As more fully detailed in the Parties' October 31, 2019 Stipulation, the Parties have agreed to Stay Plaintiffs' Third and Fifth Claims. ECF No. 53. Based on future actions by the Federal Defendants, Plaintiffs may seek to proceed with these claims upon motion to the Court or mutual agreement of the parties. Accordingly, the Parties have assembled an outline for case management below but reserve the right to seek later amendments, either jointly or unilaterally.

8. On November 1, 2019, the Court entered the Parties' Stipulation for a briefing schedule regarding Plaintiffs' First, Second, and Fourth Claims. *See* ECF No. 56. The parties propose to modify that schedule as follows to account for the Court's November 7, 2019 Order on Intervention (ECF 59):

Nov. 22, 2019- Plaintiffs file motion for summary judgment;

Dec. 23, 2019- Federal Defendants and Defendant-Intervenor TC Energy file cross-motions/responses;

Dec. 30, 2019- Defendant-Intervenors Montana and Coalition file briefs in support of Federal Defendants'/TC Energy's cross-motions;

Jan. 29, 2020- Plaintiffs file response/reply;

Feb. 14, 2020- Federal Defendants file reply;

Feb. 19, 2020- Defendant-Intervenors file replies.

WHEREFORE, the Parties respectfully request that this Court issue an order approving the following outstanding case management items:

A. The Parties reiterate the request in the October 31, 2019 Stipulation that should the Court schedule a hearing on the merits briefing on Claims One, Two, and Four, the hearing be set in March 2020.

B. Word Limits: Due to the number and complexity of issues presented in this case, the Parties request the following expansion of the word limits set forth in Local Rule 7.1(d) for the briefing set forth in Paragraph 8:

Plaintiffs' motion for summary judgment – 10,000 words

Federal Defendants' cross-motion/response – 10,000 words

Following the submission of these briefs, the parties will propose word limits for the remaining briefs, including the possibility that Plaintiffs would file a single consolidated reply brief.

Respectfully submitted this 13th day of November, 2019,

/s/ Doug Hayes

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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2019, I filed the above pleading with the Court's electronic case management system, which caused notice to be sent to all parties.

Bridget K. McNeil
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